**The Rule in *Rylands v Fletcher***

**Background Reading**

*Books*

NJ McBride and R Bagshaw, *Tort Law* (Pearson, 2024) ch 23.

R Glofcheski, Tort Law in Hong Kong (Sweet and Maxwell, 2018) ch 18.

*Article*

J Murphy, “The Merits of *Rylands v Fletcher*” (2004) 24 OJLS 643.

**I Introductory Issues**

**A. Limited Application**

The tort is of limited practical application in the modern era. It was developed *before* we had a general tort of negligence.

But nowadays, many of the relevant cases would be actionable in negligence.

In Australia, the action has been formally subsumed within the law of negligence.

**B. A Strict Liability Tort**

*Rylands v Fletcher* (1868) LR 3 HL 330

The person who for his own purposes brings on his land and keeps and collects there anything likely to do mischief if it escapes, must keep it in at his peril and is *prima facie* answerable for all the damage which is the natural consequence of its escape (Blackburn J).

On appeal to the House of Lords, this *dictum* was accepted with the qualification that D must be engaged in a “non-natural” use of his land.

*Transco plc v Stockport MBC* [2004] 2 AC 1

Bearing in mind the historical origins of the rule … its effect is to impose liability in the absence of negligence for an isolated occurrence (*per* Lord Bingham).

**II Elements of the Rule**

**A. “Non‑natural Use”**

The definition of non‑natural use remains elusive.

The best definition, for a long time, came from a case reported in 1913.

*Rickards v Lothian* [1913] AC 263

[It is]some special use bringing with it increased danger to others, and must not merely be the ordinary use of land or such use as is proper for the general benefit of the community (Lord Macnaghten).

Since then, *Rickards* has been endorsed with a little more elaboration.

*Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61

[T]he rule in *Rylands v Fletcher* is engaged only where the defendant’s use is shown to be extraordinary or unusual. (Lord Bingham)

Yet, Lord Bingham (a) doubted whether it could be a direct parallel to unreasonable user in private nuisance, and (b) said that the key was whether the use was ordinary in time and place.

**1. Determined Contextually, as a Question of Fact and Degree**

*Read v Lyons* [1947] AC 156

it was not non-natural to use land in war-time for the manufacture of explosives (Lord Macmillan).

*Wayfoong Credit Ltd v Tsui Siu Man* *Plastics* [1984] HKLR 259

There was no evidence to show that the number of dolls accumulated on the 8th floor, or the plastic of which they were composed, was unnecessary or unreasonable … There was little actual evidence as to the character of the neighbourhood, but we do know that the defendant occupied a flatted factory in an industrial building, and we may take judicial notice that Kwun Tong is by no means a purely residential area. (Cons JA.)

*Wong Ching Chi v Full Yue Bleaching and Dyeing Co Ltd* [1994] 3 HKC 606

Ultimately, the question of whether the use was natural or not arises as one of fact and degree in each case … In the present case, it has to be borne in mind that the building was an industrial building. But even then, we are confronted by 21 tanks and a pool sunk into the floor. In my view, the user here was non-natural. (Bokhary J.)

**2. Social Utility**

In *Rickards*, Lord Moulton hinted at a connection between the social utility of D’s enterprise and the question of whether there had been a natural use. However, this connection must not be overstated:

*Cambridge Water v Eastern Counties Leather* (*supra*)

I myself ... do not feel able to accept that the creation of employment as such, even in a small industrial complex, is sufficient of itself to establish a particular use as constituting a natural or ordinary use of land. (Lord Goff.)

In truth, the law is in a state where it is hard to say just what would count on this front, and for how much it would count.

**B. “D Brings onto his Land and Keeps/Collects there...”**

The difficulty with this element of the rule is what is meant by “brings onto his land and keeps or collects there”.

*Giles v Walker* (1890) 24 QBD 656

**C. Escape**

There must be an escape from D’s land.

*Read v Lyons* [1947] AC 156

Furthermore, the thing that escapes must be the thing brought onto the land.

# Chung Wah Steel Ltd v Chan Kwong Kwan [2013] HKCU 2118

The ‘thing’ brought onto the defendant’s premises was second-hand furniture, electrical appliances and various other miscellaneous items… [But] [t]he items did not escape. What escaped was the fire. (Wilson Chan J.)

**D. “Liable to do Mischief if it Escapes”**

It is clear that the thing need not be dangerous in itself. Recall that water in *Rylands* itself was not *per se* dangerous.

It was, though, able to do damage upon its escape in vast quantities was relevant.

*ACL Electronics (HK) Ltd v Bulmer Ltd* [1992] 1 HKC 133

**E. Protected Interests**

A key question concerns the range of protected interests covered by the *Rylands* rule.

**1. Land**

*Rylands v Fletcher* itself makes clear that damage to land supports an action.

**2. Chattels**

*Jones v Festiniog Rly* (1868) LR 3 QB 733 (chattels)

*Wong Ching Chi v Full Yue Bleaching and Dyeing Co Ltd* [1994] 3 HKC 606

**3. Personal Injury**

*Hale v Jennings* [1938] 1 All ER 579

*Cf Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61

**NB** **1** HL in *Transco* said that the rule in *Rylands* was a sub-branch of the law of private nuisance and that, therefore, it ought now to be confined to damage to land (and interests in land).

**NB 2** The HL saying this was NOT material to turning down the claim in *Transco*: therefore *obiter*.

**F. Remoteness**

The *Cambridge Water* case made it clear that D is only liable for foreseeable forms of harm

*Cambridge Water v Eastern Counties Leather* (*supra*)

**III Defences**

Just as with private nuisance, there are several recognised defences which D might raise.

**A. Act of God**

*Nichols v Marsland* (1876) 2 Ex D 1.

[D] can excuse himself by shewing that the escape was owing to the plaintiff’s default; or perhaps that the escape was the consequence of vis major, or the act of God. (Jenkins LJ)

**B. Unforeseeable act of a “Stranger”**

*Perry v Kendricks* [1956] 1 WLR 85

an occupant of land cannot be held liable under the rule if the act bringing about the escape was the act of a stranger, and not any act or omission of the occupier himself or his servant or agent, or any defect, latent or patent, in the arrangements made for keeping the dangerous thing under control. (Jenkins LJ)

**C. Consent of the Claimant**

*Carstairs v Taylor* (1871) LR 6 Ex 217

here the plaintiffs must be taken to have consented to this collection of the water which was for their own benefit, and the defendant can only be liable if he was guilty of negligence. (Bramwell B)

**D. Statutory Authority**

This operates in the same way we saw in the context of nuisance.

*Green v Chelsea Waterworks* (1894) 70 LT 547

Here the defendants were only doing what they were authorised to do … and, as they were not guilty of negligence, they are not liable for damage. (Lindley LJ)

**E. Default of Claimant**

It was said in *R v F* that if C was the cause of the escape, then C cannot claim.

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